

§ 904.1

22 CFR Ch. IX (4-1-05 Edition)

§ 904.1 General.

The Board's jurisdiction extends to any grievance, and to any separation for cause proceeding initiated pursuant to section 610(a)(2) of the Act.

[50 FR 31355, Aug. 2, 1985]

§ 904.2 Preliminary determinations.

(a) If an Agency, in its final review, has questioned whether a complaint constitutes a grievance, the Board will make a preliminary determination of its jurisdiction unless the Board concludes that resolution of the question of jurisdiction should be deferred until the Board has compiled a record of proceedings or held a hearing on the merits of the case.

(b) The Board may also make a preliminary determination on any question raised by a Party concerning the timeliness of a grievance, the election of other remedies under § 904.3, or any other issue whose resolution might avoid the necessity of further proceedings.

(c) Before making a preliminary determination under this section, the Board shall obtain the views of the other parties and transmit those views to all parties.

(d) Where an issue presented for preliminary determination under this section is contested by a party or would result in the termination of a case, a panel of three members of the Board shall decide the issue.

[50 FR 31355, Aug. 2, 1985, as amended at 56 FR 55459, Oct. 28, 1991]

§ 904.3 Relationship to other remedies.

(a) A grievant may not file a grievance with the Board if the grievant has formally requested, prior to filing a grievance, that the matter or matters which are the basis of the grievance be considered or resolved and relief provided under another provision of law, regulation, or executive order, and the matter has been carried to final decision under such provision on its merits or is still under consideration. This provision shall not apply to grievants who have filed a prohibited personnel practice charge before the Special Counsel for the Merit Systems Protection Board.

(b) If a grievant is not prohibited from filing a grievance under paragraph (a) of this section, the grievant may file with the Board a grievance which is also eligible for consideration, resolution, and relief as a prohibited personnel practice complaint under the provisions of law relating to the Merit Systems Protection Board or Special Counsel, or under a regulation or executive order. An election of remedies under this section shall be final upon the acceptance of jurisdiction by the Board.

[50 FR 31355, Aug. 2, 1985]

§ 904.4 Suspension of agency actions.

(a) If the Board determines that the agency is considering involuntary separation of the Grievant, disciplinary action against the Grievant, or recovery from the Grievant of alleged overpayment of salary, expenses, or allowances, which is related to a grievance pending before the Board, and that such action should be suspended, the agency shall suspend such action until the Board has ruled on the grievance. Notwithstanding such suspension of action, the head of the agency concerned or a chief of mission or principal officer may exclude the Grievant from official premises or from the performance of specified functions when such exclusion is determined in writing to be essential to the functioning of the post or office to which the Grievant is assigned.

(b) Notwithstanding paragraph (a) of this section, the Board shall not determine that action to suspend without pay a Grievant shall be suspended if the head of an agency or his designee has determined that there is reasonable cause to believe that a Grievant has committed a job-related crime for which a sentence of imprisonment may be imposed and has taken action to suspend the Grievant without pay pending a final resolution of the underlying matter. For this purpose, reasonable cause to believe that a member has committed a crime for which a sentence of imprisonment may be imposed shall be defined as a member of the Service having been convicted of, and sentence of imprisonment having been imposed for a job-related crime.